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United States Trustee

8 UNITED STATES BANKRUPTCY COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 FRESNO DIVISION

11 In re:

12 GEORGE MANUEL SOUSA,

13 Debtors.

14
15 Case No. 15-11734-B-13
Chapter 13

UST-001

16 TRACY HOPE DAVIS,
United States Trustee,

17 Plaintiff,

18 GEORGE MANUEL SOUSA,

19 Defendants.

20 A.P. No. 15-1062

21 DATE: July 23, 2015

TIME: 1:30 p.m.

PLACE: United States Courthouse
Department B, Courtroom 12
2500 Tulare Street, Fifth floor
Fresno, California

22 Judge: W. Richard Lee

23 **PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT**24 TO THE HONORABLE W. RICHARD LEE,
UNITED STATES BANKRUPTCY JUDGE:25 Tracy Hope Davis, the Plaintiff, by and through her undersigned counsel, hereby requests
entry of default judgment against Defendant, George Manuel Sousa, as follows:

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1 **I. FACTUAL ALLEGATIONS**

2 1. The Defendant and his wife, Melinda Ann Sousa, have filed a total of five abusive
3 bankruptcy cases since November 19, 2014.
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5 **Case No. 1 (05-12409-B-7):**

6 2. The Defendant and his wife, Melinda Ann Sousa, filed a Chapter 7 bankruptcy
7 voluntary petition on March 30, 2005. *See Voluntary Petition from Case No. 1 filed concurrently*
8 *as Exhibit 1 to Declaration of Robin Tubesing in Support of Motion for Default Judgment*
9 (“Tubesing Decl.”)
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11 3. The Defendant and Melinda Ann Sousa were granted a discharge on September 7,
12 2005. *See discharge order from Case No. 1 filed concurrently as Exhibit 2 to Tubesing Decl.*

13 4. This was not an abusive filing.

14 **Case No. 2 (14-15605-B-13):**

15 5. The Defendant filed a “skeletal” *pro se* Chapter 13 bankruptcy voluntary petition on
16 November 19, 2014. *See Voluntary Petition from Case No. 2 filed concurrently as Exhibit 3 to*
17 *Tubesing Decl.*

18 6. The case was dismissed on December 9, 2014, for failure to file documents. *See*
19 *dismissal order from Case No. 2 filed concurrently as Exhibit 4 to Tubesing Decl.*

20 7. The Defendant did not disclose his prior filing on the voluntary petition. *See Exhibit 3*
21 *to Tubesing Decl.*

22 **Case No. 3 (15-10108-B-13):**

23 8. The Defendant filed a “skeletal” *pro se* Chapter 13 bankruptcy voluntary petition on
24 January 15, 2015. *See Voluntary Petition from Case No. 3 filed concurrently as Exhibit 5 to*
25 *Tubesing Decl.*

1 9. The case was dismissed on February 2, 2015, for failure to file documents. *See*
2 *dismissal order from Case No. 3 filed concurrently as Exhibit 6 to Tubesing Decl.*

3 10. The Defendant indicated a prior bankruptcy filed on October 17, 2014, on his
4 voluntary petition, but did not provide the case number. The Defendant has no prior filings that
5 correspond with that date and did not disclose his actual prior filings. *See Exhibit 5 to Tubesing*
6 *Decl.*

7 **Case No. 4 (15-10668-A-13):**

8 11. Melinda Ann Sousa filed a “skeletal” *pro se* Chapter 13 bankruptcy voluntary
9 petition on February 25, 2015. *See Voluntary Petition from Case No. 4 filed concurrently as*
10 *Exhibit 7 to Tubesing Decl.*

11 12. The case was dismissed on March 16, 2015, for failure to file documents. *See*
12 *dismissal order from Case No. 4 filed concurrently as Exhibit 8 to Tubesing Decl.*

13 13. Melinda Ann Sousa did not disclose any prior filings on her voluntary petition. *See*
14 *Exhibit 7 to Tubesing Decl.*

15 **Case No. 5 (15-11374-B-13):**

16 14. The Defendant and Melinda Ann Sousa filed a “skeletal” *pro se* Chapter 13
17 bankruptcy voluntary petition on April 13, 2015. *See Voluntary Petition from Case No. 5 filed*
18 *concurrently as Exhibit 9 to Tubesing Decl.*

19 15. The case was dismissed on April 24, 2015, for failure to file documents. *See*
20 *dismissal order from Case No. 5 filed concurrently as Exhibit 10 to Tubesing Decl.*

21 16. The Defendant did not disclose any prior filings on his voluntary petition. *See*
22 *Exhibit 9 to Tubesing Decl.*

23 **Current Case (15-11734-B-13):**

24 17. The Defendant filed a *pro se* Chapter 13 bankruptcy voluntary petition on April 30,
25 2015. *See Voluntary Petition from Current Case filed concurrently as Exhibit 11 to Tubesing*
26 *Decl.*

27 18. The Defendant did not disclose any prior filings on the voluntary petition. *See*
28 *Exhibit 11 to Tubesing Decl.*

1 19. On June 19, 2015, the Chapter 13 Trustee filed a motion to dismiss the case for:

2 1) Unreasonable delay by the Debtor that is prejudicial to creditors;

3 2) Failure to appear at the scheduled 341 Meeting of Creditors;

4 3) Failure to provide financial documents;

5 4) Failure to file complete and accurate schedules; and

5 5) Failure to file a complete plan.

6 A hearing on the matter is set for July 9, 2015. *See Chapter 13 Trustee's motion to dismiss filed*
in Current Case filed concurrently as Exhibit 12 to Tubesing Decl.

7 **II. DEFAULT JUDGMENT STANDARD**

8 20. The Plaintiff requests default judgment pursuant to Rule 55(b)(2) of the Federal
9 Rules of Civil Procedure, as incorporated by Rule 7055 of the Federal Rules of Bankruptcy
10 Procedure. The Plaintiff is entitled to entry of judgment by default as a matter of law because
11 the Defendant has failed to appear, answer or otherwise defend the action. The Plaintiff's
12 evidentiary submissions are sufficient proof of the elements necessary to grant relief as requested
13 in the complaint.

14 **III. DISMISSAL WITH PREJUDICE UNDER 11 U.S.C. § 1307(c)**

15 21. Under 11 U.S.C. § 1307(c), the court may dismiss a case for cause.

16 22. Cause for dismissal includes bad faith. Factors indicating bad faith include, but are
17 not limited to: (a) whether the debtor has a history of bankruptcy petition filings and case
18 dismissals; (b) whether the debtor intended to invoke the automatic stay for improper purposes,
19 such as for the sole objective of defeating state court litigation; (c) whether egregious behavior is
20 present; and (d) whether the debtor misrepresented facts in his petition or plan, unfairly
21 manipulated the Bankruptcy Code, or otherwise filed the petition in an inequitable manner. *In re*
22 *Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 2004); *In re Price*, 353 F.3d 1135, 1139-1140 (9th Cir.
23 2004); and *In re Mitchell*, 357 B.R. 142, 153-54 (Bankr. C.D. Cal. 2006)(holding that the
24 standards for bad faith used in Chapter 11 and 13 cases should be used in determining bad faith
25 in Chapter 7).

26 23. In this case, the undisputed facts shows that the Defendant has a history of filing
27 bankruptcy then refusing to participate in the process. Between the Defendant and his wife, they
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1 have filed five abusive bankruptcy cases since November 19, 2014. The Defendant has failed to
2 fulfill his obligations as a debtor in each of these cases. In the Defendant's most recent case, the
3 Chapter 13 Trustee has moved for dismissal of his case, citing five separate grounds for cause.
4 These facts demonstrate the Defendant has filed these bankruptcy cases for the sole purpose of
5 hindering and delaying one or more creditors.

6 24. The Defendant's conduct warrants a finding of bad faith, and the Defendant's
7 underlying bankruptcy case should be dismissed.

8 **IV. INJUNCTIVE RELIEF UNDER FED. R. CIV. P. 65**

9 25. The Defendant is a serial bankruptcy filer. He and his wife have filed five abusive
10 cases since November 19, 2014.

11 26. The Defendant's pattern of successive filings and dismissals and failure to disclose
12 prior filings is evidence of his willful failure to prosecute his case in good faith and to abide by
13 the Bankruptcy Code and Rules.

14 27. The Defendant's sole purpose in filing successive cases appears to be to invoke the
15 automatic stay to hinder and delay creditors.

16 28. The Defendant's behavior constitutes an abuse of the bankruptcy system, and
17 without an order barring refileing, the Defendant's creditors are at risk of further serial filings and
18 abuse.

19 29. The Defendant's failure to perform duties imposed by the Bankruptcy Code
20 constitutes willful behavior sufficient to impose a 180-day bar against refileing pursuant to 11
21 U.S.C. § 109(g)(1).

22 30. However, a 180-day bar is insufficient to protect the Defendant's creditors from the
23 Defendant who, along with his wife, has filed five abusive bankruptcy cases.

24 31. The Plaintiff has no adequate remedy at law. The Defendant's actions and omissions
25 hinder the administration of justice and cause creditors and the bankruptcy system irreparable
26 harm. The Defendant will continue to abuse the bankruptcy process unless this Court issues an
27 injunction barring the Defendant from filing another bankruptcy case for two years.

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1 WHEREFORE, the Plaintiff prays that the Court enjoin the Defendant from filing any
2 bankruptcy case for two years and grant such other and further relief as is just and proper.

3 June 25, 2015

Respectfully submitted,

4 Gregory S. Powell
5 Assistant United States Trustee

6 /s/ Robin Tubesing
7 Robin Tubesing

8 Attorney for Tracy Hope Davis
9 United States Trustee

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